

A P P E N D I X

TO THE

C A S E

O F

Peter Burrell, Esq. and the Right Honourable Priscilla Barbara Elizabeth, Baroness Willoughby of Eresby, his Wife, upon the Claim of her Ladyship, and Mr. Burrell, in her Right, to the Office of Lord Great Chamberlain of England.

SUBSEQUENT to the Reference of the Petition of Mr. *Burrell* and Lady *Willoughby* of *Eresby* to this Honourable House, the Duchess Dowager of *Atbol* and Lord *Percy* have presented Petitions to His Majesty, in which they severally claim to be intitled to the high Office of Lord Great Chamberlain of *England*; and such Petitions having likewise been referred by His Majesty to this Honourable House; it is submitted, that it is proper, on the Behalf of Mr. *Burrell* and his Lady, to offer some Observations upon the Cases made by the Duchess Dowager of *Atbol* and Lord *Percy*, which have been printed since the preceding Case of Mr. *Burrell* and his Lady was prepared, and to state some Facts which it was unnecessary to mention whilst the Competition for this High Office was between Mr. *Burrell* and his Lady, and the Duke of *Ancafter* and Lord *Robert Bertie*.

In the First Year of the Reign of King *Henry* the First, *Albéric de Vere* (the Second of that Name, whose Son was created Earl of *Oxford* by King *Henry* the Second) received a Grant of this Office, to hold to him and his Heirs, as freely and honourably as *Robert Mallett*, or any other Person before or after him, ever held the same, and with such Liveries and Lodgings of his Court as belonged to that Office. W. T. fol. 6. Coll. of Arms

From this Period the Family of the *Veres* had an undoubted Right to this Office, and with some few interruptions during the public Troubles and Disorders that prevailed in the Kingdom, previous to the Reign of *Henry* the Seventh, continued in the enjoyment thereof: but upon the Accession of King *Henry* the Eighth, *John*, the Thirteenth Earl of *Oxford*, received a Confirmation of this Office to him and his Heirs, and exercised the same until his Decease, when it descended to his Nephew and Heir, *John*, the Fourteenth Earl of *Oxford*, who died seised thereof in the Year 1527, leaving three Sisters, his Coheirs at Law; and *John*, the Fifteenth Earl of *Oxford*, his Second Cousin, and Heir Male. Patent 1, Henry VIII. Pt. 1, M. 26.

Upon the Decease of the Fourteenth Earl of *Oxford*, a dispute arose between his Heirs Male, and his Coheirs and their Husbands, concerning the Possession and Partition of the Honours, Offices, and other Hereditaments, which he died seised of; and in order to decide such Differences, all Parties submitted their Titles to the Determination and Award of King *Henry* the Eighth, who, in the Twenty third Year of his Reign, made his Award and Decree between the said Parties, and thereby bestowed this Office, amongst others, with several other Hereditaments, upon *John*, the Fifteenth Earl of *Oxford*, in Fee; and gave several Manors, Messuages, Lands, and Hereditaments, other Part of the Estates of *John*, the Fourteenth Earl, to each of his Coheirs Inquisitio post Mortem Johannis Com. Oxon. 18. Hen VIII.

Sir William Jones, 114.

W. G. 298. b. Coll. of Arms.

Act 23, Hen. VIII.

Cohairs General: and by an Act of Parliament, passed in the same Year, (after reciting in general Terms that such an Award had been made) it was enacted, that the said *John*, then Earl of *Oxford*, should hold and enjoy to him, and his Heirs for ever, all such Castles, Manors, Messuages, Lands, Tenements, Advowsons, Patronages, Offices, Reversions, Rents, Services, and other Hereditaments, with their Appurtenances, which to the same Earl and his Heirs, by the same Award were decreed, with the usual saving Clause of all Right to all Persons, except the therein before-mentioned *John Nevill*, *Anthony Wingfield*, and Dame *Elizabeth* his Wife, *Edmund Knyghtley*, and *Ursula* his Wife, and the Heirs of the said *John Nevill*, *Elizabeth*, and *Ursula*; and it was thereby also enacted, that the said *John Nevill*, Dame *Wingfield*, and *Ursula Knyghtley*, according to the Purport of the said Award, should enjoy all such Manors, Messuages, Lands, Tenements, Advowsons, Patronages, Reversions, Remainders, Rents, Services, and all other Hereditaments, which to them were decreed by the said Award, in such Manner, as in the said Act is particularly mentioned.

*Coll. of Arms. I. 7, 65.
W. y. 123 to 140.*

In Consequence of this Award, thus confirmed by Act of Parliament, *John*, the Fifteenth Earl of *Oxford* enjoyed, and in the Thirty-first Year of King Henry the Eighth died, seised of the Office of Lord Great Chamberlain of *England*; and although it appears that his Son *John*, the Sixteenth Earl of *Oxford*, was interrupted in, and withheld from the Enjoyment of this Office, which was his undoubted Inheritance, during the latter Part of the Reign of King Henry the Eighth, and the short Reign of King Edward the Sixth; yet he appears to have been restored to and reinstated therein upon the Accession of Queen Mary, and to have exercised the same at her Coronation, and to have died seised thereof, in the Fourth Year of the Reign of Queen Elizabeth; And upon his decease, his Son *Edward*, the Seventeenth Earl of *Oxford*, inherited and enjoyed this Office, and transmitted the same to his Son *Henry de Vere*, the Eighteenth Earl of *Oxford*, who died seised thereof in the Year 1625, without Issue; which occasioned the Dispute between the Heirs Male and Heirs General of the last named Earl, particularly mentioned in the foregoing Case, which was finally decided in Favour of the Person from whom Lady *Willoughby* of *Eresby* is lineally descended.

In the Case stated by Lord *Percy* (supposing his Descent from *Dorothy*, Wife of Lord *Latimer*, can be proved) his Claim depends solely upon the before-mentioned Confirmation of this Office, to *John*, the Thirteenth Earl of *Oxford*, in Fee, unaccompanied with any Exercise or Enjoyment of it, or any Claim thereto by those from whom the Noble Lord is descended, from the Eighteenth Year of the Reign of *Henry* the Eighth, in the Year 1527, down to this present Time; a Period of above Two Centuries and a Half, and in direct Opposition to the Award of his Majesty, confirmed by Act of Parliament, and acquiesced under by all the Ancestors of Lord *Percy*.

Case of Baron Percy, fol. 2.

The Award made by King *Henry* the Eighth, is unfortunately lost, or not to be met with, and referred to only in general Words by the before-mentioned Act of Parliament, which has given rise to an Assertion, "That there is not the smallest Reason to believe, that this Award, in any Degree, concerned the Office of Lord Great Chamberlain."

Sir William Jones, 114.

Collins's Historical Collection of Noble Families, 273, 274.

Case of Lord Percy, fol. 2.

But it is submitted, that there is every Reason to conclude, that this Office was one of the Subject Matters of this Award—Because, the Office was too important to be overlooked, too honourable not to be sought after by the contending Parties.—The Assertion of Chief Justice *Crew*, (in the Year 1625, at the Time when the Award probably existed) that this Office was awarded to the Fifteenth Earl of *Oxford* is clear and positive, and uncontradicted by any of the other Judges who differed from him in Opinion respecting the Line in which this Office should descend.—In the Year 1625, it was clearly understood by all Parties; and the Cases of the then Lord *Willoughby* and Countess of *Derby* assume it as a Fact, that the Award of King *Henry* the Eighth, and Act of Parliament, did confer this Office upon *John*, the Fifteenth Earl of *Oxford* in Fee: And it is particularly to be remarked, that in the Act of the Twenty-third of King *Henry* the Eighth, the Word *Offices* occurs in that Part which relates to the Possessions that had been awarded to the then Earl of *Oxford*; but is not mentioned in that Part of the Act which relates to the Estates awarded to the Heirs general. The Remark, that this Office is not mentioned in the Recital of the Award, in the Partition Deed between the Cohairs of the Fourteenth Earl of *Oxford*, can have

no Weight, as it is not to be expected that this Deed would recite any Part of the Award not relating to the subject matter of that Partition, which this Office clearly was not.

With Respect to the Observation, That the Sixteenth Earl of *Oxford* did not succeed to this Office, and even assisted at the Investiture of the Earl of *Warwick* thereto, it is submitted, that the Conclusion drawn from thence, viz. "That no just Claim can be derived to this Office from the said Sixteenth Earl, to any of his Descendants," is by no Means warrantable; for this Earl of *Oxford* appears, (as has been before observed) to have been restored to the Enjoyment of this Office, in the Reign of Queen *Mary*, and was the Person who attempted to entail it in the Fourth Year of Queen *Elizabeth*, and died seised of the Office, and his Heirs inherited the same.

Lord Percy's Case, fol. 2,
3, and the Genealogical
Table annexed thereto.

But as a full and compleat Answer to the Claim now set up by Lord *Percy*, it is humbly submitted to this Honourable House, that the Office of Lord Great Chamberlain of *England*, being an Office with considerable Fees and Profits annexed to it, may be sued for and recovered by an Assize, or other real Action; that it falls within the Description of Hereditaments in the Statute of Limitations, passed in the Thirty-second Year of the Reign of King *Henry* the Eighth; which might be pleaded, in Bar to any Action brought by Lord *Percy*, for the Recovery of it: and that your Lordships will not give any extraordinary Countenance to a Claim, which has lain dormant for above Two Centuries and an Half; and to which, if prosecuted in a Court of Law, there would be an unanswerable Objection.

Second Inst. 411, 412.
John Webb's Case, Cal's,
Report, 8. fol. 47.

With Respect to the Claim of the Duchess Dowager of *Atbol*; supposing the Facts stated in Support of it, as far as they relate to the Dispute concerning this high Office in 1625, to be true; the Conclusion from those Facts does by no Means follow; nor does it appear, that there was any Error or Mistake in the Certificate of this Honourable House to King *Charles* the First, in the Year 1625.

For as it is admitted by the Duchess Dowager of *Atbol*, that the several Titles of all the Competitors in 1625 were before the House; and that the opinion of the Majority of the Judges, upon the Contest between the Heir General and the Heir Male of *Henry*, the Eighteenth Earl of *Oxford*, was in Favour of the Heir General; and that subsequent to the Delivery of that Opinion, viz. on the First of *April*, 1626, the Council for the then Lord *Willoughby* and Lady *Derby* (both of whom claimed in the character of Heir General to the Eighteenth Earl of *Oxford*) were heard before this Honourable House. It clearly follows; That the only possible Dispute between the Counsel for these Parties—the only possible Subject Matter of Debate for the House upon the Arguments of these Counsel, and the respective Claims of the then Competitors for this Office must have been; Whether the then Lord *Willoughby*, or Lady *Derby*, should be considered, upon that Occasion, as Heir General of the then late Earl of *Oxford*; and whether the Rules applicable to the Descent of Lands and other real Property, or those which are confined to Dignities and Titles of Nobility, should govern the Decision of the Question then before them. It is, therefore, insisted, That the Determination of this House, that this Office descended to Lord *Willoughby*, as Cousin and Heir General to *Henry*, then last Earl of *Oxford*, without calling in, or requiring the Assistance of the Judges, is a clear Decision of this Honourable House, that the Rules relative to real Property, and not to Titles of Honour and Nobility, are applicable to, and must govern the Descent of this Office; and that the Certificate afterwards presented to His Majesty, (although there may be some Inaccuracy in the Expression) was perfectly consistent with the Opinion of this Honourable House upon the Claims of the several Parties, which had been fairly and fully discussed before them.

Cases of Lord *Willoughby*
and Lady *Derby*. Cal-
lin's Historical Collec-
tion of Noble Families,
273, 274.

After so clear a Decision, by the Supreme Court of Judicature of this Kingdom, that the Rules applicable to Titles of Nobility do not govern the Descent of this Office, it would be disrespectful to state any of the numerous Arguments that occur in Favour of this Decision: But, independent of this Determination, it is further and finally submitted to this Honourable House, that the Statute of Limitations is as compleat a Bar to the Claim of her Grace the Duchess Dowager of *Atbol* as to that of Lord *Percy*.

J. MANSFIELD.
J. DUNNING.
J. SPRANGER.

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